

Unfortunately, with the 101st's departure and the sharp reduction in the number of Coalition forces in Mosul—to as few as one American battalion—the city and surrounding area became a haven for al-Qaida.

However, in mid-2007 the Coalition forces began to achieve some success. This occurred in no small part because of the increased effectiveness of the 2nd and 3rd Iraqi divisions that were assigned to the city and surrounding areas. According to the Institute for the Study of War, in May and June positive results quickly became apparent with the capture or killing of 13 al-Qaida leaders, including 6 emirs and 4 terrorist cell leaders. Yet, as al-Qaida members were being pushed out of Baghdad and al Anbar Province, the number of terrorists in Mosul was increasing.

However, our forces, led by the 3rd Armored Cavalry Regiment, which replaced the 4th Brigade of the 1st Cavalry Division in December, and the Iraqi security forces have kept the pressure on. In mid-December, al-Qaida's security emir for northern Iraq was captured along with al-Qaida's security emir for Mosul. This was followed by the capture of al-Qaida's deputy emir for all of Mosul.

Our successes also have been strengthened with the reinforcement of our forces by additional U.S. and Iraqi forces. This has enabled Coalition and Iraqi forces to implement the counterinsurgency strategy of utilizing Joint Security Stations in the eastern and western portions of Mosul, much like those that were so successful in Baghdad.

The Iraqi Army units in Ninawa Province, of which Mosul is a major city, also have a new commander, LTG Riyadh Jalal Tawfiq. This is an important development since Lieutenant General Tawfiq played a vital role in securing Baghdad.

Despite these promising developments, much remains to be accomplished. On May 10, the Coalition launched Operation Mother of Two Springs. Though it is too early to tell if this operation will have the same successes that our forces are experiencing in Baghdad, MG Mark Hertling, the commander of Multi-National Forces—North stated yesterday that daily attacks are down 85 percent since the operation began. The General also noted that the Coalition has detained more than 1,200 individuals many of whom are self-proclaimed al-Qaida members who describe themselves as "battalion commanders . . . suicide bomb makers, foreign fighter facilitators, financiers and emirs." Moreover, a number of arms caches have been discovered. However, the desperation of al-Qaida appears to have increased due to Saturday's attack by two female suicide bombers.

Mr. President, the battle for Mosul is being fought right now. The final outcome has yet to be decided. However, initial indications point to a successful

conclusion because of the implementation of a proven counterinsurgency strategy, improvements in the Iraqi security forces and the bravery and dedication of our fighting men and women.

The second major area of consternation was Basra. Until recently, Shiite groups such as the Mahdi militia—which is associated with Moktada al-Sadr—ruled the streets.

In order to counter this lawlessness, Prime Minister al-Maliki launched Operation Charge of the Knights. This was a bold initiative. First, Prime Minister al-Maliki showed that he is a leader who is willing to make difficult political decisions to secure a better future for his people by traveling to Basra and taking personal charge of this operation. Second, this was a large-scale operation led and planned by Iraqi security forces to restore central government control in Basra.

At first, poor planning seemed to have doomed this operation. Even General Petraeus initially stated, "The fact is that the Iraqi operations in Basra were not properly planned . . . in the wake of recent operations, there were units and leaders found wanting in some cases . . ."

However, it appears that we all judged this operation too quickly. According to a recent article in the New York Times, "the oil-saturated city of Basra has been transformed by its own [Iraqi security forces] surge." Iraqi forces "have largely quieted the city, to the initial surprise and growing delight of many inhabitants who only a month ago shuddered under deadly clashes between Iraqi troops and Shiite militias . . . government forces have taken over Islamic militant's headquarters and halted the death squads and vice enforcers."

It should also be noted that according to the highly respected Jane's Defence Weekly "in areas occupied by Iraqi army forces, the government has begun a wide ranging set of operations to solidify its long-term presence."

In fact, due in large part to the success of Operation Charge of the Knights, Jane's Defence Weekly made the following observation: "Operation Charge of the Knights provides further evidence that the Iraqi army can fight effectively and lead operations when supported by coalition enablers such as air support, logistics, and intelligence. The Basra security operation follows other successful Iraqi army performances in the south, notably the January 2007 defeat of the Jund al-Samaa sect in pitched battles outside Karbala and the January 2008 simultaneous takedown of a dozen cultist cells from the same organization spread across Basra and Nasiriyah."

Finally, examples of the major strides the Iraqi forces are making can be seen in the operations that were launched this week in Sadr City. Yesterday, the New York Times reported that six battalions of, "Iraqi troops pushed deep into Sadr City. . . as the Iraqi government sought to establish

control over the densely populated Shiite enclave in the Iraqi capital. The long awaited military operation, which took place without the involvement of American ground forces, was the first determined effort by the government of Prime Minister al-Maliki to assert control over the sprawling Baghdad neighborhood, which has been a bastion of support for Moktada al-Sadr. The operation comes in the wake of the government's offensive in Basra, which for the time being seems to have pacified the southern Iraqi city and restored government control."

The New York Times goes on to report about the Sadr City operation, "the Iraqi forces quickly assumed positions at a main thoroughfare and near major hospitals and police stations. Two companies ventured even further north to secure the Iman Ali Hospital. . . No American ground forces accompanied the Iraqi troops, not even military advisers. But the Americans shared intelligence, coached the Iraqis during the planning and provided overhead reconnaissance throughout the operation. Still, the operation was very much an Iraqi plan."

Madam President, I believe that Ambassador Crocker summed up the situation best when he stated in his testimony: "Al-Qaida is in retreat in Iraq, but it is not yet defeated. Al-Qaida's leaders are looking for every opportunity they can to hang on. Osama bin Laden has called Iraq 'the perfect base,' and it reminds us that a fundamental aim of al-Qaida is to establish itself in the Arab world. It almost succeeded in Iraq; we cannot allow it a second chance. . ."

The choice is clear. The men and women of our armed forces have made real and sustained progress over the past 16 months. The list of their accomplishments and the accomplishments of the Iraqi security forces grows longer every day.

The balance is changing. Now, more than ever, is the time to stand behind our forces to ensure they achieve the victory of which they so deserve.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

JUDICIAL CONFIRMATIONS

Mr. McCONNELL. Mr. President, in the final year of President Clinton's final Congress, two of his circuit court nominees, Richard Paez and Marsha Berzon, were pending in the Judiciary Committee. Frankly, they were quite controversial. For example, Judge Paez had openly defended judicial activism. He said if the Democratic branch has

failed to act on a political matter, it was incumbent on judges to do so, even if the matter properly belonged to the legislature.

Not surprisingly, conservative groups and many Republican Senators opposed the Paez and Berzon nominations. The Chamber of Commerce, a business association, not an ideological group, was so troubled by the prospect of Judge Paez's confirmation that it broke its policy of staying out of nomination disputes and opposed his nomination.

I ask unanimous consent to have printed in the RECORD the release by the Chamber of Commerce opposing Judge Paez.

There being no objection, the material was ordered to be printed in the RECORD as follows:

U.S. CHAMBER ANNOUNCES OPPOSITION TO
PAEZ JUDICIAL NOMINATION

WASHINGTON, D.C.—The United States Chamber of Commerce today announced its opposition to the elevation of district court judge Richard Paez to the 9th Circuit Court of Appeals. The 9th Circuit Court reviews federal court decisions in California, Arizona, Washington, Oregon, Idaho, Nevada and Montana.

In taking the unusual step of opposing a judicial nominee, Chamber senior vice president Lonnie Taylor said, "Judge Paez' lower court rulings demonstrate an alarming degree of judicial activism that must not be rewarded."

Taylor specifically cited Paez' ruling in *John Doe I v. Unocal*, saying the decision "represents an unconstitutional judicial intrusion into foreign policy with dangerous implications for the U.S. economy and world markets."

In the *Unocal* case—which concerns the construction of an offshore drilling station and natural gas pipeline—Judge Paez held that U.S. companies doing business overseas were liable for the actions of foreign governments. The ruling opened the door to environmental activists and others to use similar class action lawsuits as an avenue of attack on disfavored business projects, Taylor charged.

"Judge Paez' ruling, if upheld, could cripple international commerce and establish a far-reaching precedent of holding U.S. companies hostage to the actions of foreign governments," said Taylor.

Improving the ability of American businesses to compete in the global marketplace is a top priority of the Chamber. As part of the Chamber's efforts to advance free trade, it will oppose any attempts to undermine international competitiveness. The U.S. Chamber notified Senators of its opposition to Judge Paez in a letter yesterday.

The U.S. Chamber of Commerce is the world's largest business federation representing more than three million businesses and organizations of every size, sector and region.

Mr. MCCONNELL. The California Senators, to their credit, were tireless advocates for Judge Paez and Judge Berzon. Their nominations became the California Senators' cause, and their ultimate confirmations were due to our colleagues' tireless advocacy.

Their confirmations, though, were also due to then-Majority leader Trent Lott ensuring that his commitment regarding the Paez and Berzon nominations was, in fact, kept. On November 10, 1999, Majority Leader Lott placed a

colloquy between himself and then-Democratic Leader Daschle in the CONGRESSIONAL RECORD. In it, Senator Lott committed to proceed to Paez and Berzon by March 15 of the following year, which of course was a Presidential election year, as this year is.

Majority Leader Lott also stated he did not believe that filibusters of judicial nominations are appropriate, and that if they were to occur, he would file cloture on their nominations and he would himself support cloture if necessary.

He noted then-Judiciary Chairman HATCH was consulted on that commitment. Given that many in our conference and over 300 groups opposed those nominations, it would have been easier in many respects for Senator Lott not to fulfill his commitment. He could have taken a hands-off approach, shrugged his shoulders, put the onus on Chairman HATCH to make good on the majority leader's commitment. After all, Senator Lott was not the Judiciary Committee Chairman, Senator HATCH was. He could simply have said he did not control what happened in the Judiciary Committee, Chairman Hatch did. But Senator Lott understood that commitments in this body are not to be taken lightly, especially when they are made by the majority leader himself.

So true to his word, Majority Leader Lott worked to ensure that his commitment was kept. The Paez and Berzon nominations were reported out of the committee. The majority leader, Senator Lott, filed cloture on both. On March 8, 2000, a week ahead of schedule, he and I and Chairman HATCH and a supermajority of the Republican conference voted to give Judges Paez and Berzon an up-or-down vote.

Most of those Republicans, myself included, then voted against them because of concerns about their records. But Judges Paez and Berzon were then, of course, confirmed and have been sitting on the Ninth Circuit for 8 years because Senator Lott honored his commitment.

Unfortunately, a similar commitment made to my conference was not honored today. Last month, my good friend from Nevada, the majority leader, acknowledged that the Democratic majority needed "to make more progress on" circuit court nominations.

To that end, he committed to do his "utmost;" "to do everything" possible; to do "everything within [his] power to get three [more] judges approved to our circuit [courts] before the Memorial Day recess."

"Who knows," he even suggested, "we may even get lucky and get more than that [because] we have a number of people from whom to choose."

True, the majority leader gave himself an out. He could not "guarantee" his commitment because "a lot of things can happen in the Senate." But when the Senate majority leader commits to do everything in his power to honor a commitment, that should

mean choosing a path that likely will yield a result.

Well, today we learned we are not going to get three more circuit court confirmations by the Memorial Day recess, let alone the four or more the majority leader thought might be possible. No, we are going to get one. Only one.

Given my friend's clear commitment and the numerous nominees the Democratic majority had to choose from, the question my Republican colleagues and I are asking is this: Did the majority do its "utmost"? Did it do "everything" possible? Did it do "everything within [its] power"?

In fact, we are asking did it do anything at all to realistically ensure the commitment would be kept?

When my friend made his commitment, he noted that we had circuit court nominees from all over the country in the Judiciary Committee who could be processed. He listed the States they were from. Most have been pending for a long time, and the Judiciary Committee has had ample time to study their records. Indeed, some have already had hearings; others have already been favorably reported by the committee to other important positions. These nominees were, in effect, on the two-yard line, and could easily have been picked and confirmed.

People like Peter Keisler; he has been pending for almost 700 days. He has had a hearing. He has been rated unanimously well-qualified by the American Bar Association. He has earned accolades from Republicans and Democrats alike, including an endorsement from the Washington Post. His paperwork is complete, and he is ready to go.

Or people like Chief Judge Robert Conrad; he has been pending for over 300 days. The Senate has already confirmed him, on two separate occasions, to important Federal legal positions, first as the chief Federal law enforcement officer in North Carolina and then to a life-time position on the Federal trial bench. He, too, has received the ABA's highest rating, and has earned praise from Republicans and Democrats alike. He has the strong support of both home-State senators and is ready for a vote.

During our colloquy, my friend did not reference the nomination of Michigan State Judge Helene White as an option. That is because her nomination to the Sixth Circuit did not yet exist. It wasn't here. It arrived here later that day, at which point there were only 5½ weeks until the Memorial Day recess. Or, put another way, her nomination arrived 700 days after Mr. Keisler's, 300 days after Judge Conrad's.

Thirty-five days is not much time to process a nominee who, by her own admission, has participated in 4,500 cases, half of which are completely new since her last nomination. Indeed, the average time for confirming a judicial nominee in this administration is 162 days. The majority decided to try to

run Judge White through the process in just 35 days. It scheduled a hearing for her that was only 22 days after her nomination. I respect the abilities of members on the Judiciary Committee, but even they cannot review 4,500 cases in 22 days.

In addition, when the majority scheduled her hearing, the ink was barely dry on the FBI's background investigation, which had come up only the day before, and the committee had yet to receive her ABA report. In fact, today as I speak, it still is not here.

This matters because Chairman LEAHY has made it abundantly clear that the receipt of the ABA report is a precondition for him to allow a vote on a judicial nominee, saying: "Here is the bottom line. . . . There will be an ABA background check before there is a vote." He reiterated that his rule will be observed with respect to the White nomination.

So to honor the majority leader's commitment, did our Democratic colleagues choose someone whom the committee had ample time to vet, whose paperwork has been done for a long time, and who, in the case of Judge Conrad, the Senate had already confirmed—twice? No, they decided to rush through Judge White, someone whom several members of the committee are completely unfamiliar with, and whose record for most of the last decade the entire committee is completely unfamiliar with, including thousands of her cases.

In essence, the majority decided to throw a confirmation "hail Mary" to satisfy its own Democratic membership, instead of taking a bi-partisan path that had every indication of success and would have fulfilled the commitment, like finally processing Mr. Keisler or Judge Conrad.

If the majority were serious about keeping its commitment all this should have been avoided. My friend from Nevada has said he consulted fully with Chairman LEAHY before making his commitment. Chairman LEAHY has been the lead Democrat on the Judiciary Committee for over a decade. He, perhaps more than anyone, is aware of the logistical requirements for processing nominees.

We assume he would have advised the majority leader of the near-certain impossibility of confirming Judge White in time to keep the commitment. Even if he didn't, the ranking member and I did just that almost a month ago, when we wrote to him and the Chairman, expressing our serious concerns about this very situation arising.

I ask unanimous consent that a copy of the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, April 29, 2008.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Capitol Building,
Washington, DC

Hon. PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary,
Dirksen Senate Office Building, Wash-
ington, DC

DEAR SENATORS REID AND LEAHY: We write to express our serious concern regarding statements made by Chairman Leahy during last week's Judiciary Committee Executive Business Meeting. In discussing Senator Reid's April 15, 2008, commitment to confirm three more circuit court nominations before the Memorial Day recess, Senator Specter asked Chairman Leahy to clarify whether he was saying he would not honor the commitment if the scheduling was not "convenient for the two Michigan nominees." In response, Chairman Leahy stated, "I will do everything possible to get it [done] by Memorial Day, but if the White House slow walks [the Michigan nominees' paperwork], we probably won't."

We all know there are several time-consuming steps in the judicial confirmation process, including a Federal Bureau of Investigation background investigation, the issuance of a rating by the American Bar Association (ABA), a hearing, questions for the nominee following the hearing, a Committee vote, and finally a floor vote. Given these standard prerequisites and Judge Helene White's recent nomination date of April 15, 2008, we do not believe regular order and process will allow for her confirmation prior to May 23, 2008. In addition, the FBI is currently conducting a supplemental investigation for Mr. Raymond Kethledge, which must be completed prior to his hearing. Chairman Leahy's statements insinuate that, if the Committee cannot process Judge White and Mr. Kethledge prior to the recess, then the straightforward commitment made by the Majority Leader and, by reference, Chairman Leahy will not be honored.

We would hope, given the likelihood that Judge White and Mr. Kethledge cannot be confirmed prior to the recess, that, in order to fulfill the commitment, Chairman Leahy would turn to other outstanding circuit court nominees pending in Committee who have been ready for hearings and waiting far longer than Judge White or Mr. Kethledge. As we have mentioned previously, Mr. Peter Keisler has already had a hearing and has been waiting for over 660 days for a simple Committee vote, and Judge Robert Conrad and Mr. Steve Matthews, nominees to the Fourth Circuit, are ready for hearings and have been waiting for many months. Both Judge Conrad and Mr. Matthews have enjoyed strong home-state support from their Senate delegations, one of whom is a valued member of the Committee. All three of these nominees deserve prompt consideration by the Committee and up-or-down votes by the full Senate.

It is simply a matter of fairness to include in the commitment, nominees who clearly can be processed and who have been ready for hearings and pending the longest. Further, we object to the selective importance that the Judiciary Committee is placing on home-state senatorial support. The Committee appears to view the support of Republican senators as a necessary, but insufficient, condition for their constituent nominees; while at the same time deeming dispositive the views of Democratic senators, either for or against a nominee. As the Majority Leader himself noted, such disparate treatment is patently unfair.

The clock is ticking. It has now been two full weeks since your commitment to do "everything" you could to confirm three more

circuit court nominees by the Memorial Day recess. Yet since that commitment, the Committee has only scheduled one hearing for one circuit court nominee. More troubling still is the fact that the Chairman strongly intimidated last week that the Committee may refuse to honor the commitment, not because it is impossible for it to do so, but because the Chairman's preferred queue of nominees will not be ready in time due to the standard requirements of the FBI and the actions of a third party (the ABA), upon which the Democratic Majority has placed particular importance over the years.

If the Committee does not hold a hearing for two more circuit court nominees prior to May 6, 2008, it is exceedingly unlikely that the Senate will be able to confirm at least three circuit court nominees prior to May 23, 2008, given the standard amount of time it takes to move a nomination through the steps in the confirmation process. In order to honor the commitment, we respectfully urge the Committee to schedule hearings for Judge Conrad and Mr. Matthews, and hold a Committee vote for Mr. Keisler as soon as possible.

We look forward to your response.

Sincerely,

MITCH MCCONNELL.
ARLEN SPECTER.

Mr. MCCONNELL. The reasons for our concern a month ago have proven to be correct. Anyone could have seen this problem coming—anyone, except evidently, our Democratic colleagues who must have chosen not to.

Which brings me back to the question I and my Republican colleagues are asking: Is it consistent with a commitment to do "everything within your power" to confirm three more circuit nominees by Memorial Day, to then choose the one nominee who, for logistical reasons alone, is the least likely to be confirmed in time to keep the commitment? Mr. President, chasing the impossible, and then blaming others or expressing surprise when it eludes your grasp is not a good excuse, and will be remembered for a long, long time.

So today is a sad and sobering day for me and my colleagues. There are now well-founded questions on our side about the majority's stated desire to treat nominees fairly and to improve the confirmation process. And there is frustration that will manifest itself in the coming days, and will persist until we get credible evidence that the majority will respect minority rights and treat judicial nominees fairly.

MEMORIAL DAY 2008

Mr. MCCONNELL. Mr. President, in observance of Memorial Day this year, I had the distinct honor of meeting a group of World War II veterans from Kentucky who had traveled to our Nation's Capital to see the World War II Memorial. A couple of the veterans, by the way, told me this was their first trip to Washington.

This memorial, completed in 2004, is a fitting tribute to the millions of Americans—some who returned home, some who did not—who put on their country's uniform to fight the greatest and most destructive war the world